

THE HONOURABLE SRI JUSTICE V. ESWARAI AH

WRIT PETITION No.7199 of 2006

DATED: 12-04-2006

BETWEEN

Dr. Ghouse Mohiuddin Ahmed,
S/o. Shri Farikuddin Ahmed.

...PETITIONER

AND

The Municipal Corporation of Hyderabad
and another.

...RESPONDENTS

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ORDER:

Petitioner seeks a Writ of Mandamus to declare the impugned notice issued by the first respondent in notice No.17/ACP-III/C-3/MCH/06 dated 06.04.2006 as illegal and arbitrary.

Heard the learned counsel appearing for the petitioner as well as the learned standing counsel appearing for the respondent.

Learned counsel for the petitioner submits that the petitioner is a medical practitioner residing at UK and has purchased flat No.1 in the ground floor of Skylark Apartments

bearing municipal No.3-6-209 admeasuring 1790 sq. yards with undivided share of land of 100 sq. yards situated at Basheer Bagh, Hyderabad by virtue of registered sale deed dated 20.09.2004. The said apartment was constructed in 1982 by taking valid and necessary permission and Flat No.1 was constructed in the ground floor by clearly demarcating the parking area leaving ample space for parking and there is no violation of any of the rules and regulations.

While so, the respondent without issuing any show cause notice, issued a notice No. 17/ACP-III/C-3/MCH/2006 dated 06.04.2006 under Section 636 of Hyderabad Municipal Corporation Act, 1955, stating that the petitioner has made constructions not covered by the sanctioned plan and converted parking space in cellar floor other than parking and carried out the said construction which is unauthorized and causing lot of inconvenience to the inmates in the building and also to the visitors of the building, resulting in vehicles being parked on the road, creating lot of traffic congestion, accident and public nuisance and also that the High Court in suo-motto contempt case in C.C.No.101 of 1996, dated 28-02-1996 ordered that steps be taken immediately for creation for parking areas with a view to reduce traffic congestion being created on account of cars being parked on roads for want of parking within the premises. Accordingly, the petitioners were directed to remove the said unauthorized structures within three days.

I am of the opinion that issuing notice under Section 636 of the Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') is in respect of the buildings, which have been constructed after obtaining permission for construction of the cellar, ground floor and upper floors, the relevant provision to issue a notice is under Section 452 of the Act. If that is the case, it is for the respondents to point out whether the petitioners have converted the parking place into shops. If there is any deviation or conversion, it is for the respondents to issue a show cause notice under Section 452 of the Act. But, without issuing any show cause notice, straight away a notice under Section 636 of the Act, as if the constructions have been made without any permission, has been issued directing the petitioner to remove the structures within three days.

Having regard to the facts and circumstances of the case, the impugned notice No.17/ACP-III/C-3/MCH/2006 dated 06-04-2006 is directed to be

treated as a show cause notice only permitting the petitioner to file a representation/explanation within one week from the date of receipt of a copy of this order and till such representation/explanation is considered and appropriate orders are passed and communicated to the petitioner, the respondents shall not remove or demolish the premises of the petitioner.

The writ petition is accordingly disposed of.

V. ESWARAIAH, J

April 12, 2006

DSK